*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

\+ WRIT PETITION NO. 25318 OF 2003

%FRIDAY, SIXTH DAY OF AUGUST,

TWO THOUSAND FOUR

\# A.P. State Cooperative Societies Secretaries &

Employees Union, B-780, Hyderabad, rep. by

its General Secretary, P.Narasimha Reddy

Petitioner

Versus

$ The Government of Andhra Pradesh,

Cooperation Department, rep. by its

Secretary, Hyderabad, and another.

Respondents

! Counsel for the petitioner : Sri S.Ramachandra Rao,

Senior Counsel, assisted by

Sri K.R.Prabhakar, Advocate

^ Counsel for the respondents : Government Pleader for

Cooperation

< Gist :

>Head Note:

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1 2002(1) ALD 271

2 2003(1) ALD 197

3 2004(2) ALD 273

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 25318 of 2003

Between:

A.P. State Cooperative Societies Secretaries &

Employees Union, B-780, Hyderabad, rep. by

its General Secretary, P.Narasimha Reddy

..... PETITIONER

AND

1. The Government of Andhra Pradesh

Cooperative Department, rep. by its

Secretary, Hyderabad.

2. The Commissioner & Registrar of

Cooperative Societies, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Mandamus declaring the action of the Government in issuing G.O. Ms. Nos. 308, Agriculture & Cooperation (Coop.VI) Department, dt.19.11.2003, G.O.Ms. No. 94, Agriculture & Cooperation (Coop.VI) Department, dt. 28.2.2004 and G.O.Ms. No. 1104, Agriculture & Cooperation (Coop. VI) Department, dt 4.12.2003 as arbitrary, illegal, unjust, contrary to law and issue the consequential directions not to give effect to G.Os, impugned herein viz., G.O. Ms. Nos. 308, Agriculture & Cooperation (Coop.VI) Department, dt.19.11.2003, G.O.Ms. No. 94, Agriculture & Cooperation (Coop.VI) Department, dt. 28.2.2004 and G.O.Ms. No. 1104, Agriculture & Cooperation (Coop. VI) Department, dt 4.12.2003 and further direct the respondents to implement the directions of the Registrar of Cooperative Societies (Statutory Authority) reflected in Rc.No. 3958/2004, dated 23.2.2004.

For the Petitioner: Mr. S.Ramachandra Rao, Senior Counsel, assisted by Mr. K.R. Prabhakar, Advocate

For the Respondents : Government Pleader for Cooperation

The Court Made the Following

:ORDER:

The union of the employees and secretaries of the A.P. State Cooperative Societies has filed this writ petition. Initially invalidation of the Government orders in G.O.Ms. No. 308 Agriculture & Cooperation (Coop. VI) Department, dated 19.11.2003 was sought. By an amendment, which was ordered on 18.3.2004, in addition, invalidation of G.O.Ms. No.94 Agriculture & Cooperation (Coop. VI)

Department, dated 28.2.2004 and G.O.Ms. No. 1104 Agriculture & Cooperation (Coop. VI) Department, dated 4.12.2003 has also been prayed for and in addition a direction to the respondents to implement the directions of the Registrar of Cooperative Societies contained in the proceedings Rc.No. 3958/2004, dated 23.2.2004.

Chronology of events, in brief:-

A scheme for providing financial assistance to Primary Agricultural Credit Cooperative Societies (PACS) was formulated by the Government of India known as “Half a Million Jobs Programme”. The intent of the scheme was, *inter alia*, to meet the managerial requirements of the PACS. Under the scheme during the year 1973-74 approval was accorded by the Central Government for incurring an expenditure of Rs.36 lakhs on the payment of subsidy to PACS to enable them to meet the cost on account of employing Paid Secretaries. The Registrar of Cooperative Societies (the Registrar) was accordingly directed, in G.O. Ms. NO. 390 Agriculture & Cooperation (Coop. VI) Department, dated 12.7.1973 of the State Government to consider the factors enumerated in the G.O. while selecting societies for appointment of 2,000 Paid Secretaries in respect of whom subsidy has been sanctioned by the Government of India. The Paid Secretaries so appointed were to be paid a consolidated salary of Rs.150/- pm. The Cadre Committee constituted by the Registrar u/Sec. 116A of the A.P. Cooperative Societies Act, 1964 (for short ‘the Act’) was required to administer the scheme. Despite the above measure PACS continued to be in financial distress and were unable to meet the cost of Paid Secretaries. Consequently a restructuring of the large number of PACS was undertaken in 1977 by merging what were perceived to be financially weak PACS. As a result, about 15000 PACAS were pruned to about 7,000.

In G.O. Ms. NO. 198 dated 28.3.1978 and consequent proceedings of the Registrar dated 29.4.79 a common cadre fund was created to meet the cost of Paid Secretaries of PACS out of the contributions

from cooperative institutions. A State cadre fund committee was also constituted for the administration of the cadre fund. Despite these and other measures, PACS continued to be financially weak. Over the years the salaries of the Paid Secretaries was enhanced contributing to further financial distress of the PACS. There also ensued over a period of time persistent friction between the elected managements of the PACS and the Paid Secretaries. Successive committees were appointed (B.K.Rao Committee and D.S. Iyer Committee) to study the problem. The latter committee recommended the abolition of the common cadre and relegation of Paid Secretaries to the PACS with administrative control over them vested with the management of the PACS.

Consequently by A.P. Act 21/85 Sec. 116AA was introduced into the Act with effect from 22.4.1985 abolishing the common cadre for employees of PACS and vesting the PACS management with a power to fix staffing pattern, qualifications, pay scales, but with prior approval of the Registrar –vide Sec.116C of the Act. The common cadre of all categories of employees other than those specified in Sec.116A constituted before the commencement of the A.P. Cooperative Societies (Amendment) Act, 1985, was abolished by a legislative provision Sec.116AA introduced into the Act by A.P. Act 21/85. This legislative measure also introduced Sec.116C into the Act whereby a society was empowered to fix its staffing pattern, qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar.

Consequent on the abolition of the common cadre and substitution by a regime of allotment of Paid Secretaries to various PACS, the Registrar on 30.9.1985 communicated special model bye laws dealing with the service conditions of employees of PACS including the aspect such as recruitment, pay scales, disciplinary control and the like. The special model byelaws were further revised and communicated to the PACS for adoption on 17.10.93. It would appear that the Union of Paid Secretaries obtained a stay disabling adoption of these revised special model bye laws.

In the year 1988 the State Government constituted a district level committee for recommending cases to the managing committees of PACS in the areas relating to appointment and disciplinary proceedings against the Paid Secretaries and other employees. The union of Paid Secretaries challenged the constitution of the district level committee headed by the Chairman, District Cooperative Central Bank (DCCB) as its president, and obtained stay. This court is not informed as to what happened to this *lis*.

What requires to be noted however is that the State does not appear to have been rid of its earlier mind set of exercising control over the employees of the PACS despite the explicit legislative mandate of Sec.116C of the Act introduced by Act 21/85 whereby the control over its employees vests with the PACS. In the mandatory legislative context neither the Registrar nor the Government ought to have had any direct say in the appointments, staffing pattern, pay scales and emoluments or disciplinary control over the Paid Secretaries or other employees of the PACS. This disinclination of the State to part with the hitherto available power despite the explicit legislative divestiture of its direct control had given rise to other problems which will be chronicled hereinafter.

With effect from 22.4.1985 in view of Sec.116C of the Act, the power of fixing staffing pattern, qualifications, pay scales and other allowances for its employees vests with PACS subject to prior approval of these areas by the Registrar. However the Paid Secretaries were agitating with the Government *inter alia* for regular scales of pay and allowances as also for absorption into the service of the DCCBs in Category V (Supervisors). Responding to this demand the Registrar by proceedings dated 21.2.1991 constituted a committee to go into the conditions of service of Paid Secretaries. This committee *inter alia* examined the possibility of ensuring a scale of pay between Category V and Category VI of DCCB employees. The committee had noted that PACS are institutions distinct from the cooperative bank and therefore giving Paid Secretaries parity in pay scales and DA with the employees of the bank was inappropriate.

This committee felt that higher pay should be earned by the Paid Secretaries by their additional efforts and toning up the revenues of the PACS. Without any jurisdiction, power or authority (in the context of Sec.116C) the committee recommended a uniform pay scale to all cadres of Paid Secretaries working in the several PACS, at Rs.264-708/-.

The State Government in total disregard of the provisions of Sec.116C, after discussion only with the representatives of the Paid Secretaries and without even consulting the PACS issued a memo dated 14.10.1991 *inter alia* allowing the scale of Category-V (Supervisors) of DCCBs to the Paid Secretaries. Other decisions contained in this memo were to abolish the cadre fund, to create a corpus fund for payment of salaries to the Paid Secretaries and to permit mutual transfers. Thus by a memo, without any power, authority or financial responsibility towards the establishment charges of the PACS, the State Government not only mandated a pay scale to the category of Paid Secretaries but also conceptually treated all PACS as one unit explicated by its decision to permit mutual transfers. In issuing this mandate in the memo dated 14.10.1991, the State Government does not appear to have even considered the financial position and the scale of operations of the various PACS in the State – an irrational and irresponsible exercise of non existent power.

The Government memo dated 14.10.1991 was communicated by the Registrar to the PACS on 30.10.1991. However on 14.2.1992 the Registrar intimated to the District Cooperative Officers and General Managers of DCCBs that they should await further instructions in the matter. Thereafter based on the proposal of the A.P. State Cooperative Bank (APCOB) the Registrar by a memo dated 23.11.1992 issued details of pay and allowances including DA and guidelines for payment of incentive allowances in respect of Paid Secretaries of PACS. This memo was equally in contravention of the

unambiguous mandate of Sec.116C of the Act. There were no proposals from the PACS in respect of the pay scales and emoluments of Paid Secretaries which were approved by the Registrar. The Registrar's communication dated 23.11.1992 was a thus diktat *de hors* the law.

Galvanised by the memo of the State Government dated 14.10.1991 and the circular memo of the Registrar dated 23.11.1992, it is alleged, the Paid Secretaries started paying themselves salaries in accordance with the State Government's memo dated 14.10.1991. The Registrar's memo dated 14.2.1992 not to operationalise the Government memo dated 14.10.91 was challenged by various Paid Secretaries in this court and by interim orders this court suspended the operation of the Registrar's memo dated 14.2.92 and in another case this court directed *status quo* as on 23.11.92 with regard to the salaries of the Paid Secretaries.

Unions of the employees and Paid Secretaries of PACS of various districts had filed W.P. No. 16558/92 and batch challenging the memo of the Registrar dated 14.2.92 (in effect keeping in abeyance the Government memo dated 14.10.91). The batch of writ petitions came to be considered by a Division Bench of this court and by the judgment dated 30.8.96 they were disposed of. In defence to the reliefs claimed it was contended on behalf of the respondents which included the State Government that under the provisions of Sec.116C of the Act and Rule 72(b) of the A.P. Cooperative Societies Rules 1964 (for short 'the Rules'), the PACS were entitled to fix the service conditions including the pay scales of its employees and with the approval of the Registrar and that the Government had no power to fix the pay scales. In view of the rival contentions the Division Bench disposed of the batch of writ petitions directing the Government to constitute a committee to consider the pay scales of the Paid Secretaries and their allotment to societies after considering the views of the representatives of the APCOB, DCCBs, PACS and the petitioner-Union and to take a decision in accordance with the provisions of the Act. This decision was rendered by this court on

noticing that undisputedly neither the APCOB, DCCB or PACS were heard or their views considered before the issuance of Government memo dated 14.10.1991.

After the above judgment, the State Government in G.O. Ms. No.1338 dated 23.12.96 constituted a committee comprised of officers to study the issue of pay scales of Paid Secretaries and to make recommendations. The committee submitted its report to the State Government. Again the Government referred the matter to a Cabinet Sub Committee for further examination of the issue. The Cabinet Sub Committee submitted its recommendations. Thereafter the Government referred the issue to another Cabinet Sub Committee constituted by G.O. Ms. No. 71 dated 25.3.2000. This Cabinet Sub Committee was indentured to consider the general working of the cooperatives and to suggest measures for vitalizing the PACS. The second Cabinet Sub Committee also submitted its recommendations in due course.

Thereafter the State Government appears to have woken up to the legislative reality and decided that Paid Secretaries should be treated as employees of the concerned PACS and that their pay and service conditions should be determinable by the PACS themselves after prior approval of the Registrar. This was in the year 2000, 15 years after Sec. 116C was introduced into the Act w.e.f. 22.4.85 by Act 21/85. All this while, unmindful of the clear, explicit and mandatory provisions of the Act, the State Government, the Registrar and the various authorities persuaded themselves to a misconception that they had a *sui generis* authority, power and jurisdiction to unilaterally fixed the service conditions and pay scales of employees of PACS including Paid Secretaries. In disregard of the spirit and even the text of the mandatory Legislation, these authorities issued a series of orders and constituted a host of committees to go into areas prohibited for their consideration by the Act.

Meanwhile on 25.9.97 after the judgment dated 30.8.96 in W.P. No.16558/92 and batch, the Registrar by a circular memo issued

instructions to all officers of the department to ensure that Paid Secretaries do not draw pay on par with the pay scales of Cadre-V (Supervisors) of the DCCBs as revised in 1996. Again the unions of employees and Paid Secretaries of the PACS filed writ petitions challenging the circular of the Registrar dated 25.9.97 and sought liberty to draw the pay scales of Cadre-V (Supervisors) of DCCBs as revised for the said category. By interim orders of this court the Registrar's circular dated 25.9.97 was suspended.

As neither the incomes nor profits of the PACS were sufficient to sustain the higher pay scales including revised pay scales, salaries were being drawn by the Paid Secretaries from the amounts recovered from the loanees of the PACS without the amounts being remitted to the DCCBs towards repayment of members' loans. As a result, across the State a large number of PACS defaulted in the repayment and remittal of the amounts due to the DCCBs. As a consequence DCCBs defaulted in the remittal of the amounts due to the APCOB.

It is inexplicable as to why the mandatory annual audit of the affairs of the PACS (u/Sec.50 of the Act) did not reveal this regnal financial anarchy since 1985. PACS continued to employ Paid Secretaries and other employees who were drawing salaries and emoluments year after year without an approved staffing pattern, without approved pay scales and the employees were appropriating the amounts recovered from the loanees without remitting the amounts due to the DCCBs and the DCCBs in turn were defaulting to the APCOB. All this in clear contravention and subversion of the explicit provisions of Sec. 116C of the Act apart from a clear transgression of every financial norm ordained even by the minimal precepts of financial discipline. A situation had arrived when all the three tiers of the cooperative credit institutions – the APCOB, the DCCBs and the PACS were facing liquidation and insolvency. The elaborate regulatory and supervisory architecture forged by the carefully synchronised provisions of the Act was rendered dysfunctional by the mal-administration and abdication of the Executive Branch.

Earlier, the validity of Rule 72 of the Rules (which was intended to effectuate the provisions of Sec.116AA of the Act) was challenged and upheld by the judgment of a Division Bench of this court dated 20.12.88 in W.P. No. 11634/88. The provisions of Sec.116AA were challenged in W.P. No. 17735/89 by the A.P. State Cooperative Secretaries and Employees Union, Warangal District Branch. A Division Bench of this court by the judgment dated 18.7.91 declined to go into the validity aspect on account of the scanty pleadings and absence of substantiation of the principles on which such challenge was presented. A learned single Judge of this court in a latter decision dated 10.10.91 in W.P. No.15506/89 repelled another challenge to these provisions of the Act.

It also requires to be noticed that for nearly a decade the Government memo dated 14.10.1991 was not recalled by the State. Only the Registrar by the circular memo dated 14.2.92 had unsuccessfully tried to interdict the effectuation of the Government memo dated 14.10.1991. Eventually, confronted by the spectre of the impending collapse of the PACS, the State Government issued G.O.Ms.No. 314 dated 26.12.2000. This G.O. is an exercise in equivocation. Without admitting, as it should have that the State had for nearly a decade exercised illegal and irresponsible power, it records:

" ….. It is a moot question whether the Registrar, under the guise of exercising power u/Sec. 116C or under any other provisions of the Act or Rules, can impose uniform pay scale and allowances for all the PACS in the State irrespective of the volume, business/activity and the paying capacity depending upon financial capability of the Society concerned;"

The decision in G.O.Ms. No.314 dated 26.12.2000 is that matters of fixing the establishment strength, staffing pattern, scales of pay and other allowances of the employees should be left to be decided by the PACS with the prior approval of the Registrar as laid down under the provisions of Sec.116C of the Act and the Rules made thereunder, based on their capacity to pay, which would be determined by factors such as business turnover, administrative

costs, margin earned on business turnover and the consequent profit or loss. This G.O. concludes with a direction issued in purported exercise of powers u/Sec. 131 of the Act to the Registrar, to take consequent action in matters relating to the staffing pattern, qualifications, pay scales and other allowances for employees of the PACS in accordance with the provisions u/Sec. 116C of the Act. The earlier memo dated 14.10.91 was also cancelled in this G.O. At last the executive Government recognised the legitimacy of Sec.116C of the Act over 110 months after the memo dated 14.10.91. The provisions of the Act were recognised more than one and a half decades after the coming into force of Act 21/85.

Writ petitions were filed by unions of Paid Secretaries and employees of PACS challenging the orders in G.O.Ms. No. 314 dated 25.12.2000. A learned single Judge of this court granted suspension of the provisions of the G.O. and also ordered that the writ petitions be listed before a Division Bench for hearing. A Division Bench of this court by the judgment dated 16.10.2001 in W.A. Nos.424 and 425 of 2001 along with connected writ petitions rejected the challenge and upheld the validity of G.O.Ms. No.314. This court recorded the following infirmities in the earlier Government memo dated 14.10.91:

a. The orders in the memo dated 14.10.91 were issued in disregard of the provisions of Sec.116C of the Act.

b. The order was issued without consultation with the APCOB, DCCBs and PACS, which are effected by the decision.

c. The memo dated 14.10.91 could not be sustained even under the provisions of Sec.131 of the Act as the Government cannot issue directives contrary to the provisions of the Act.

d. No understanding between the State Government and the

class of Paid Secretaries, under the provisions of the Act is legitimate and enforceable without the consent of the PACS to such an agreement. and

e. The memo was issued even without considering the financial status and capacities of the PACS to sustain the increased financial burden.

As against the aforesaid judgment of the Division Bench dated 16.10.2001 the aggrieved employees of PACS preferred Special Leave Petitions before the Supreme Court. The Supreme Court dismissed SLP Nos. 250 and 251 of 2002 by the judgment dated 2.1.2002.

The provisions of the Act were again amended by Act 22 of 2001 with effect from 25.4.2001. Sec.116C was amended whereby the expenditure towards pay and allowances of the employees (of a society including PACS) shall not exceed 2% of the working capital or 30% of the gross profit, in terms of actuals in a year whichever is less. A ceiling limit on the expenditure on the staff of a society was thus incorporated as a legislative prescription.

The provisions of Secs. 116AA and 116C of the Act were challenged by the A.P. State Cooperative Societies Secretaries and Employees Association, Nizamabad. In terms of an earlier judgment dated 10.10.1991 in W.P. No. 15506/89 a learned single Judge disposed of the writ petition. Aggrieved the petitioners preferred an appeal. A Division Bench of this court by the judgment dated 19.10.2001 **(*A.P. State Cooperative Societies Secretaries and Employees Association, Nizamabad vs State of A.P.*)** rejected the appeal recording the finding that the provisions of Secs. 116AA and 116C of the Act are not unconstitutional.

As a consequence, surcharge notices were issued to the Paid Secretaries working in various PACS for recovery of the excess amounts drawn by them pursuant to the Government memo dated

14.10.1991. The Union of the Secretaries and Employees of Cooperative Societies challenged the initiation of proceedings and issuance of the surcharge proceedings u/Sec.60 of the Act, in W.P.No. 3076 of 2002. In the writ petition a direction was sought to the respondents not to apply the provisions of the A.P. Cooperative Societies Second Amendment Act 2001 (Act 22 of 2001) to the amounts already drawn prior to the amendment and not to take any coercive steps such as recoveries or refixation of salaries. It was principally contended that Act 22 of 2001 has no retrospective operation.

A learned single Judge by the judgment dated 11.9.2002 **(*A.P. State Cooperative Societies Secretaries and Employees Association vs State of A.P. and others*)** allowed the writ petition. This court held (a) that the Government memo dated 14.10.1991 is void and inoperative only from 16.10.2001 (the date of the judgment in W.A. Nos. 424 and 425 of 2001 and batch); (b) that the provisions of Sec. 116C of the Act, as amended by Act 22 of 2001 and the amendment of Rule 28 of the Rules by G.O.Ms. No. 37 dated 28.1.2002 are prospective; (C) that the Registrar has no power to revise the pay scales retrospectively; (D) that the judgment of this court dated 16.10.2001 in W.A. Nos. 424 and 425 of 2001 does not *per se* enable recoveries of the emoluments drawn by the Paid Secretaries pursuant to the Government memo dated 14.10.91, till its cancellation by G.O. Ms. No. 314 dated 26.12.2000 and (e) that the salaries already drawn by the members of the petitioner's union cannot be characterised as drawals by fraud or misrepresentation warranting invocation of recovery proceedings u/Sec.60 of the Act. It was also declared that the respondents have no right to recover the salaries paid to the members of the petitioner-Union pursuant to the Government memo dated 14.10.1991, upto 16.10.2001.

As against the above judgment, the State preferred W.A. No. 32 of 2003, which was considered along with a connected writ appeal No. 413 of 2003 and writ petition No. 8522 of 2003. By the judgment dated 20.1.2004 W.A. Nos. 32 and 413 of 2003 **(*Government of A.P.***

***vs A.P. State Cooperative Societies and Employees Union and others*)** were allowed and the judgment of the learned single Judge (2 supra) was set aside. This court concluded that the basis of the claims of the writ petitioner viz., the Government Memo dated 14.10.91 was non-existent as the memo was declared void and inoperative so far as cooperative societies are concerned by the Division Bench of this court in its judgment in W.A. Nos. 424 and 425 of 2001, while upholding the validity of G.O.Ms. No. 314 dated 26.12.2000. There was thus no legal basis for the fixation of pay scales for the Paid Secretaries on par with Category-V (Supervisors) of the DCCBs, held this court. This court also recorded the fact that no PACS had fixed the staffing pattern, pay scales and allowances payable to Paid Secretaries, so far. In view of the amended provisions of the Act i.e., Sec.116C, the societies are duty bound to fix the pay scales after obtaining prior approval of the Registrar and fixation of the pay scales should be inconformity with the provisions ofSec.116C as amended by Act 22 of 2001, ruled the Division Bench of this court. This court also found that even prior to the introduction of Sec.116C of the Act in 1985 (by Act 21 of 1985 w.e.f. 22.4.1985), the State Government had no power to fix the pay and allowances of employees working in cooperative societies. Consequent on these findings this court held that the emoluments drawn by Paid Secretaries in excess of their lawful entitlement were recoverable. This court observed that the determination of the excess amounts drawn by the employees of PACS is dependent upon the fixation of pay and allowances by each PACS in accordance with the statutory provisions in particular Sec.116C and the Rules framed thereunder. While the members of the writ petitioner-union are not entitled to resist the recovery proceedings for the mere reason that they had drawn the emoluments under interim orders granted by this court from time to time, the quantification of the amount recoverable from each of the employees of each PACS is not possible unless the salary, emoluments and other allowances of employees of a PACS are determined by the PACS concerned, whether before or after the incorporation and amendment to Sec.116C of the Act, observed this

court. Till the exercise of determination of salaries and emoluments of the employees of PACS, from time to time, is undertaken and the quantification of the amount recoverable on that basis is arrived at (thereafter), the question of recoveries as such, does not arise, pointed out this court. The entitlement of the PACS to recover the excess amounts drawn by the employees of PACS pursuant either to the Government memo dated 14.10.91 or the interim orders of this court in the series of litigation instituted by the union of the employees, was however categorically and unequivocally, upheld by the Division Bench of this court in the judgment reported in 2004(2) ALD 273. The contrary view of the learned single Judge was set aside.

It is urged at the Bar, in this case, on behalf of the petitioner-Union, a contention not seriously disputed on behalf of the respondents, that the exercise of determination of the salary and emoluments of Paid Secretaries of various PACS in the State has not yet been completed.

Due to persistent mismanagement of the PACS over the years, the wholly unauthorised and irresponsible issuance of orders by the State (memo dated 14.10.91), the wholly unauthorised conduct of the PACS in recruiting employees and paying salaries and emoluments to such employees in a context where even the staffing pattern was neither proposed by the PACS nor approved by the Registrar as required u/Sec.116C of the Act, on account of the persistent abdication of the regulatory and supervisory obligations under the Act by the executing apparatus of the State Cooperative Department and the resultant financial anarchy in the PACS as also the malingering litigation by the employees of the PACS, the vitality of the PACS has been sapped.

Recoveries of the excess amounts drawn by the employees, in particular the Paid Secretaries does not appear possible in the near future. The determination of the emoluments of employees of the PACS over a long period of time in particular from 21.4.1985, has not

even commenced in right earnest. Currently, it would appear, on account of the mal-administration of the PACS coupled with the looming drought situation, a majority of the PACS do not earn any profits. On application of provisions of Sec.116C as amended by Act 22 of 2001 w.e.f. 25.4.2001 the expenditure on salary and emoluments of employees of societies is subject to a ceiling referable to a specified percentage on the gross profits actually earned by a society in a year. There being no profit at all in a majority of PACS or not enough profit in a few PACS, nearly all the PACS find it difficult to pay even meagre salaries to its staff.

Pursuant to the abolition of the common cadre on the introduction of Sec.116AA into the Act by Act 21 of 1985 w.e.f. 22.4.85 and the decadarisation *inter alia* of Paid Secretaries, allotments of Paid Secretaries to various PACS had been completed. It is represented by the learned Government Pleader for Cooperation that the allotment of Paid Secretaries to PACS could not be completed in about 3 districts in the State. There is some dispute as to this factual circumstance. However, it is the admitted factual scenario that allotment of all the Paid Secretaries in the State had not been completed.

With a view to deal with the above situation the State Government in G.O. Rt. No. 1104 Agriculture and Cooperation (Coop.IV) Department dated 4.12.2003, issued amendments to Rules 72 of the Rules. The Existing sub-rule(5) was substituted with the following:-

> " Notwithstanding anything contained in sub-rules (1) to (4), wherever Secretaries are not allotted, for any reason whatsoever, to the Primary Agriculture Cooperative Societies as per the guidelines laid down in sub-rule (1) and (2) such Secretaries shall be deemed to have been allotted to the Primary Agriculture Cooperative Societies idn which they are working at the time of abolition of the common cadre and shall be governed as per the provision of sub-rules (3) and (4)."

In view of the deemed provision (supra), the process of allotment of all the Paid Secretaries in the State has been *de jure* accomplished. The salaries and emoluments of Paid Secretaries and their disciplinary control vests with the PACS to which they have been

either factually allotted or deemed to have been allotted. The salary and emoluments of all the Paid Secretaries in the State is thus the exclusive concern and obligation of the respective PACS in which they are employed/allotted.

The Current Grievance :-

The petitioner-union contends that its members – Paid Secretaries have more than 25 years of service and a majority of them face the prospect of total or substantial deprivation of salaries. The petitioners further contend that the current financial crises of the PACS is not due to mismanagement but on account of the State issuing directions for non-recoveries of the loans on account of the drought situation. *De hors* the competing assertions as to the underlying reasons, the established fact is that all the PACS in the State are facing acute financial distress and are not in a position to pay salaries to their employees without violating the provisions of Sec.116C of the Act and the employees being permitted to appropriate the amounts payable to DCCBs from the amounts recovered from their members towards repayment of the loans.

Confronted by the serious financial distress of a overwhelming majority of the PACS in the State and a situation where the financial position of the several PACS does not permit payment of any salaries to its employees including the Paid Secretaries or at best a very meagre salary in a few cases, the State Government in order to alleviate the distress of the employees of PACS, issued GO Ms. No. 308 and latter G.O. Ms No.94, Agriculture and Cooperation (Coop-VI) Department, dated 19.11.2003 and 28.2.2004 respectively. These Government Orders are the subject matter of challenge in this writ petition. Though technically in the writ petition G.O.Ms. No.1104 dated 4.12.2003 whereby Rule 72(5) of the Rules has been substituted, was also challenged, at the stage of arguments the challenge was restricted to only to G.O.Ms Nos. 308 and 94. The validity of the amendments issued in G.O. Ms. No.1104 dated 4.12.2003 has therefore not been considered in this judgment.

In the circumstances it is necessary to analyse the developments immediately preceding and the provisions of G.O.Ms. No. 308 and 94, Agriculture and Cooperation (Coop.VI) Department dated 19.11.2003 and 28.2.2004, in some detail.

The State Government was sensitised to the fact that (a) a large number of PACS in the State do not have adequate resources for paying salaries and emoluments to their employees; (b) Paid Secretaries and other employees of PACS have drawn salaries, advances and allowances far beyond the capacity of the PACS; and (c) the employees of the PACS have been recovering the loan amounts due to the PACS from the members and have been appropriating the same towards their salaries instead of crediting the amounts payable to the higher tiers of financial agencies. The Government therefore concluded that these circumstances seriously impaired the fiscal health of PACS all over the State. This recognition led to the amendment of Sec.116C of Act 22 of 2001 w.e.f. 25.4.2001.

In the implementation of the provisions of Sec.116C of the Act, the Government noticed that in many of the PACS the gross profits available are so meagre that these societies are unable to comply with the provisions of Sec.116C and the complementary rules made in this behalf. The employees of such PACS are left with reduced salaries or none at all, depending upon the financial status of the PACS and had been making representations for emoluments. Another Cabinet Sub Committee was constituted to deliberate on these issues. The Cabinet Sub Committee recommended a proposal to allow APCOB/DCCBs to grant loans to PACS for enabling payment of salaries to the Paid Secretaries and other employees of the society, the quantum of grant to be subject to the maximum limit of Rs.50,000 p.a. per society. The Registrar and the Managing Director of the APCOB had also submitted proposals in this behalf by their communications to the Government dated 7.10.2003 and 9.10.2003 respectively.

After considering the above proposals and recommendations, the State Government issued orders in G.O. Ms. NO. 308 dated 19.11.2003. The decision of the State Government to the extent relevant is as under:

"4. It has accordingly been decided to exempt the following categories of Primary Agricultural Cooperative Societies from the provisions of Section 116-C of APCS Act and Rule-29 of the APCS Rules in the following manner:

1. All Primary Agricultural Cooperative Societies which do not have gross profit are exempted from the operation of Section 116-C of the APCS Act for 3 years from the date of issue of this order.

2. All Primary Agricultural Cooperative Societies which have nominal gross profit which is not sufficient to meet the expenses of pay and allowances of atleast one employee are also exempted from the provisions of Sec.116-C of the APCS Act and Rule 29 of the APCS Rules for 3 years.

5. This exemption is being given in terms of Sec.131 of the APCS Act subject to the following conditions:

a. The PACS, having no gross profit or gross profit less than Rs.50,000/- calculated in accordance with the rules, shall apply to the DCO concerned along with an action plan indicating how they plan to improve their financial position over a period not exceeding 3 years and thereby comply with Section 116-C of the APCS Act within that duration.

b. The exemption shall be given for a period of 3 years i.e., for the years 2003-04, 2004-05 and 2005-06.

c. The PACS in this category shall not employ more than 1 person and the total cost of management of PACS shall not exceed Rs.50,000/- per year. Depending on the work load they may employ a person on part time basis or contract basis or on seasonal basis.

d. The PACS should produce before the DCO a proof of sanction of loan from higher financial agency towards meeting the cost of 1 person employed by them.

6. Government hereby permit APCOB to provide the above loan to each PACS through DCCB subject to the conditions mentioned above.

7. While Rs.50,000/- will be the maximum loan amount per annum, the entire amount will not be disbursed in a single transaction. In other words, the monthly payment will not exceed Rs. 3,500/- per employee. However, in situations where the emoluments of the existing employees are less than this amount, they will

continue to get the emoluments which they are presently drawing.

8. The eligibility criteria is as mentioned in the Annexure to this order.

9. This order comes into force with immediate effect. ”

The conditions precedent to be fulfilled by the PACS to be eligible for the salary advance from the APCOB/DCCBs have been set out in an annexure to G.O. Ms.No. 308. *Inter alia* the conditions are –

A. The submission of a business development plan by following which a PACS would be in a position to comply with the provisions of Sec.116C by the end of the third year i.e., would be in a position to meet the establishment expenses from its own funds in conformity with the provisions of Sec.116C.

B. The PACS should remove the irregular appointees and excess staff, before approaching for the loan.

C. The PACS should furnish a personal undertaking of the Secretary and President or PIC of the Society for full repayment of the loan drawn from the APCOB/DCCBs towards salary advances from the interest margin earned by the society and in case these margins are not sufficient, from their personal fund.

D. Furnishing of a resolution of the society accepting the business development plan target.

In addition to the above conditionalities, a procedure for disbursement of salary advance was also set out in the annexure wherein it was stipulated that the advance for the 2nd and 3rd year would be allowed only after clearance of the previous year’s advance.

Many of the conditions/eligibility criteria set out in the annexure to G.O.Ms. No.308 cannot be fulfilled by any PACS in the current State of financial anarchy and chaos in which the PACS are situate.

The learned Government Pleader submitted that either because the

eligibility criteria could not be met or for other undisclosed reasons, no amounts were released towards salary advance to any of the PACS in the State, pursuant to G.O.Ms. No. 308.

The Registrar addressed a letter dated 23.2.2004 (subsequent to G.O.Ms.No. 308) to the State Government outlining proposals for transitory arrangements towards resolving the practical difficulties encountered in implementing the provisions of Sec.116C, in PACS and DCCBs. This communication of the Registrar recorded that out of a total of 22 DCCBs around 12 are not complying with the provisions of Sec.116C; 8 of them have no net worth and another 4 are on the verge of achieving that status. The Registrar also records that out of the 4610 PACS, 3624 do not have gross profit and are therefore ineligible to have any employee. This is the position in the context of Rule 29 which requires that every PACS should have a Paid Secretary. The Registrar further records that the aforementioned statistics present a scenario in which 12 DCCBs face closure and 3624 PACS would have to function without any staff. The Registrar informed the Government that to tackle this problem, his office had constituted a core group of senior officials. On the basis of their recommendations an 'approach paper' was prepared on the issue. The approach paper set out suggestions for dealing with the implementation of Sec.116C as well as the staffing pattern and establishment costs at PACS level. The Registrar outlined major suggestions in the approach paper for the consideration of the Government. These suggestions included granting exemption to the APCOB/DCCBs/PACS from the provisions of Sec.116C for an interim period of 3 years pending completion of the restructuring and revitalisation of the Cooperative Agricultural Credit Structure; issuing instructions to the APCOB to take up manpower audit in APCOB as well as the DCCBs including an action plan for all the DCCBs to enable them to comply with the provisions of Sec.116C at the end of 3rd year period; to regulate the expenses in PACS during the three year period based on the 2% margin eligible to a society on the recoveries of loans instead of on the gross profits earned. The

approach paper, the Registrar informed the Government, also recommended that the pay and allowances of the Paid Secretaries appointed under the earlier common cadre system should be regulated as per the recommendations of the Cabinet Sub Committee by limiting the maximum pay to Rs.8,000 and that the other secretaries appointed by the societies should be paid the minimum wages applicable to the district concerned. It was also recommended that the surplus staff in the DCCBs and PACS should be retrenched by offering compensation as per law. The approach paper accompanying the Registrar's communication to the Government dated 23.2.2004 set out a detailed analysis of the broad features of the PACS, the genesis of the system of Paid Secretaries, the emoluments being paid to the Paid Secretaries and other employees, as well as the problems consequent on the fiscal discipline mandated by Sec.116C(1) of the Act. The current staff structure of the PACS in various districts in the State was also set down in the approach paper.

The APCOB too submitted proposals to the Government. The APCOB's proposals were regarding an interim arrangement for utilisation of the services of the staff of PACS with a wage structure based on the business levels and performance of the PACS. As per the APCOB recommendations the wage structure (of Secretaries, Clerks and Attenders) in the PACS should be based on the business levels of each PACS and the emoluments payable to the Secretaries, Clerks and Attenders in each PACS should also be based on the same parameters. The APCOB's proposals also contained the details of the categories of employees in the PACS in various districts in the State.

On the representation of the petitioners herein, the State Government issued revised orders with regard to sanction of loans by APCOB/DCCBs to PACS for meeting the establishment charges, in G.O. Ms. No.94 dated 28.2.2004. These orders were in partial

revision of the earlier orders in G.O. Ms. No. 308.

In the revised instructions issued in G.O.Ms. No.94, the State Government fixed benchmark levels of staff and emoluments for various categories of PACS and prescribed ceiling on staff strength and establishment costs. The benchmarks and ceiling were prescribed in relation to the business levels of PACS. As seen from the table in the G.O., the maximum permissible level of staff for each PACS is based on its scale of operations which is also the parameter for fixing the monthly emoluments payable to the secretaries. The emoluments payable to clerks and attenders is left to be determined by the Managing Committee or PIC of each PACS, depending upon the business levels and income. There is also a specification of the limits on the overall expenditure on establishment charges and advances per annum per PACS depending upon the scale of operations. Instead of the uniform advances towards establishment charges of Rs.50,000 per annum specified in the earlier G.O.Ms. No.308, in G.O. Ms. No.94 the permissible advance by APCOB/DCCBs is specified between a bandwidth of Rs.50,000 to Rs.1,25,000, depending upon the scale of operations of the PACS concerned. The other significant features of G.O.Ms. No.94 are – (i) relaxation of the condition imposed in G.O.Ms. No. 308 (viz., the release of the advance amount is subject to recovery of the excess amounts already drawn in the year 2002-03). In the latter G.O. it is ordered that as the process of recovery is likely to consume time and the State has postponed the recoveries to be affected *vis-à-vis* the excess drawals already made, for the time being, this condition need not be fulfilled; and (ii) PACS having business above Rs.200 lakhs are permitted a staffing structure in excess of what is suggested in the G.O. but subject to strict compliance with the provisions of Sec.116C of the Act. Subject to the other conditions set out in G.O.Ms. NO. 308, the State Government permitted the APCOB to provide the revised loan package to each of the PACS through the concerned DCCBs.

Sri S. Ramachandra Rao, learned Senior Counsel put forth the

following contentions on behalf of the petitioner:

A. The Registrar is a statutory authority invested with the powers of general supervision over the affairs of the societies and empowered to issue appropriate directions to a society in the interests of the cooperative moment or in the public interest or in order to prevent the affairs of the society from being conducted in a manner detrimental to the interest of the members, the depositors or the creditors of the society [vide Sec.4(2)];

B. In view of his statutory position, the recommendations of the Registrar as contained in his proposals dated 23.2.2004 addressed to the State Government, are statutory recommendations which are mandatory and ought to have been strictly implemented by the State Government;

C. The APCOB has no recognised role under the provisions of the Act. The orders in G.O.Ms. Nos. 308 and 94 as they are based on the proposals of the APCOB are illegal for acceptance of the recommendations of an unauthorised authority.

D. The impugned G.Os are violative of Sec.116C of the Act as the State Government is not entitled to fix ceilings on the emoluments payable to the staff of the PACS as fixing the pay and emoluments of the staff is a function exclusively within the domain of each PACS subject to the approval of the Registrar.

E. The State has discriminated between the APCOB and DCCBs on the one hand and the PACS on the other. While the APCOB and DCCBs have been fully exempted from the operation of Sec.116C (with regard to compliance with the fiscal discipline while paying salaries to their staff) and the employees of those institutions are permitted to draw salaries regardless of the working capital and gross profit ceiling limits, the Paid Secretaries of the PACS are alone penalised by insisting on compliance with the provisions of Sec.116C of the Act.

F. U/Sec. 116C r/w Rule 28 of the Rules it is the PACS which has to fix or

revise the pay scales of its staff under intimation and subject to approval of the Registrar. The fixing of the ceilings on emoluments payable to the staff of PACS by the State Government, in the impugned G.O's, is therefore *ultra vires* and wholly without power or jurisdiction; and

G. Reduction or denial of salary to employees of the PACS on account of fall in business or in gross profits of a PACS is arbitrary and illegal.

What is discernable from a broad analysis of the events leading up to the present crisis in the management of the PACS is that there has been a long and unbroken tradition of mismanagement of the administrative and financial affairs of the Primary Agricultural Credit Cooperative Societies in the State, which are intended to provide a critical service to the agricultural community, a critical component of the Indian civil society. The State's interference without undertaking any compensatory financial liability or obligation, in the affairs of the PACS and demonstrably in blatant subversion of the legislative mandate u/Sec.116AA and 116C of the Act has substantially contributed to the acute financial crisis of the PACS and consequently its employees. The regulatory and supervisory mechanisms under the provisions of the Act including the audit, inquiry, inspection and surcharge components thereof (Chapter VII of the Act) have almost become dysfunctional. For decades there is no apparent regulation by the Cooperative Department to rein in the PACS to function in conformity with the legislation. The shocking State of affairs is reflective of the disregard by the concerned Executive Branch (the Cooperative Department at all levels) of the clear, unambiguous, explicit and mandatory provisions of the Act. The problem has been confounded by the irrational and uncanalised litigative propensities of the category of Paid Secretaries and other employees of the PACS. It is their representations to the State on the basis of which the memo dated 14.10.1991 was issued by the State Government. This unauthorised diktat was never questioned either by the APCOB, the DCCBs or the PACS' managements. No caution by any member of the permanent executive of the State has been

brought to the notice of this court which recorded the view that the State was incompetent to issue the directive contained in its memo dated 14.10.1991. Compliance with this illegal directive and payment of salaries or drawal of salaries by the Paid Secretaries themselves on the basis of this memo, accelerated the collapse of a substantial number of PACS who were already by then on the verge of extreme financial distress. Resultantly the PACS have become canalising agencies for collecting the dues of loans given to their members and appropriating them towards salaries including of Paid Secretaries, without remitting the amounts due to the higher echelons of the cooperative financial institutions like the DCCBs and the APCOB. Financial discipline in the cooperative credit institutions in these three tiers of institutions, had vanished.

As early as in April 1985 contemporaneously with the decadarisation of centralised service (Sec.116A), the Legislature had vested the power of fixing staffing pattern and pay scale of its employees in the PACS but subject to the prior approval of the Registrar. As a result of this mandatory legislative prescription the Registrar should have ensured, consistent with his statutory obligation as a supervisory authority under the Act, that each of the PACS fix the staffing pattern, pay scales and other allowances for its employees and submit it to him for his approval under the provisions of the Act. The approval of the Registrar to such proposals of the PACS should have been consistent with some norms of financial discipline viz., rationally relatable to the financial capacity of each PACS to meet the pay and allowances of its employees and consistent with the subsumed requirement that PACS should act with financial responsibility to ensure recoveries of the loans due and repayment and remittals of the dues recovered from its members to the higher echelons in the cooperative credit structure like the DCCBs from where the amounts were borrowed by the PACS to extend loans to its members. This minimal and elementary administrative and financial discipline was demonstrably violated by the Registrar and this authority functioned, as is apparent and demonstrable, totally oblivious even to this

minimal administrative obligations under the Act. He was content to be a silent spectator to the regnant and unchecked administrative and financial anarchy by every PACS without exception. The Government memo dated 14.10.91 accelerated the countdown to doom, of the PACS in the State.

In recognition of the unmitigated chaos and financial mess that the PACS had worked themselves into and with a view to restore fiscal sanity in their functioning, the Legislature again intervened and by Act 22 of 2001 an amendment was made to Sec.116C. A ceiling on expenditure towards pay and allowances of the employees was imposed relatable to a specified percentage of the working capital or of the gross profits, in terms of the actuals in a year, whichever is less. More than 20 months after the legislative measure under Act 22 of 2001, the State Government woke up to the need to cancel its earlier memo dated 14.10.91 by issuing G.O.Ms. No. 314 on 26.12.2002.

By now a overwhelming majority of the PACS in the State were unable to pay any salary or were able to pay only nominal salaries to their staff in view of the provisions of Sec.116C of the Act as amended by Act 22 of 2001. The employees of the PACS were faced with the prospect of working month after month without salaries or with only a pittance. Recoveries of loans from members of PACS also dwindled during the period on account of consecutive years of drought in vast parts of the State. Even for the Paid Secretaries of the PACS, the halcyon days of drawing salaries and emoluments on par with Category V (Supervisors) of DCCBs or on par with the revised pay scales of those Supervisors and directly appropriating the recovered loan amounts, were over. There was no money trickling into the PACS even for illegal appropriation towards salaries. The popular but clearly illegal mandate of the State as contained in its memo dated 14.10.91 had met its eventual nemesis in an inevitable fact situation.

Reacting to the above critical situation, the State Government with a view to temporarily alleviate the distress, issued the impugned G.Os. These orders directed the APCOB and DCCBs to advance loans to the PACS in the State to meet the establishment expenditure on the pay and allowances of the staff of PACS either wholly or *protanto* the shortfalls of PACS, but subject to the prescribed ceilings. The uniform ceiling of Rs.50,000 specified in G.O.Ms. No.308 was revised in the latter G.O. Ms. NO.94 dated 28.2.2004, whereunder the ceiling limit on the amounts advancable by the APCOB and DCCBs was benchmarked between Rs.50,000 to 1,25,000/-, depending on the business level of each PACS. The latter G.O. also fixed the permissible maximum level of staff per PACS also relatable to its business level as also the monthly emoluments to the category of Secretaries depending upon their length of service and the business levels of the PACS. The salaries of the other employees such as Clerks and Attenders was left to be fixed by the Managing Committee/PICs of the respective PACS depending upon their business levels and income but subject to the provisions of Sec.116C as amended by the Act 22 of 2001.

The petitioner-union is aggrieved by the inadequacy of the amounts (specified in the Government Orders) advanced towards meeting the establishment expenses on the pay and allowances of the employees of the PACS and by the prescriptions relating the staff strength and salaries payable to the category of Secretaries of PACS.

It requires to be noticed that (as required u/Sec. 116C(1), even as introduced by Act 21 of 1985) no PACS in the State is demonstrated before this court to have fixed the staffing pattern, pay scales and other allowances for its employees with the prior approval of the Registrar. Consequently in the absence of even an approved staffing pattern there could have been no legal recruitment of staff by any PACS. In the absence of any pay scales fixed with the prior approval of the Registrar as required u/Sec. 116C(1) of the Act no salary could legitimately have been paid to any employee of a PACS. All employments in the PACS of any staff and all payments to such

employees after 22.4.1985 (the date w.e.f. which Sec.116C(1) was introduced into the Act by Act 21 of 85) was illegal and in clear violation of the mandatory legislative prescription.

The grievance of the petitioner is that the employees and in particular the Paid Secretaries are required to draw emoluments as fixed in G.O. Ms. No. 94 dated 28.2.2004, pay and allowances which are lesser than what they were earlier drawing. The fact of the matter however is that all the pay and allowances, the employees of PACS were drawing and are currently drawing are wholly unauthorised, illegal and contrary to the specific provisions of the Act. In the absence of an approved staffing pattern, pay scales and other allowances fixed in accordance with the mandatory provisions of Sec.116C(1) of the Act, in any of the PACS in the State, it is not permissible to countenance the petitioner's complaint that the factual but illegal drawal of salaries as earlier, should be perpetuated by a Mandamus. It is trite that no Mandamus can be issued to perpetuate a clear illegality.

Though initially and as pleaded, invalidation of G.O. Ms. Nos. 308 and 94 dated 19.11.2003 and 28.2.2004 was sought by the petitioner, at the hearing of the writ petition however, in recognition of the reality that if the G.Os are invalidated even the allegedly meagre amounts permitted by the Government orders would not be available towards disbursement towards the salaries and emoluments of the employees of the PACS, Sri S.Ramachandra Rao, learned Senior Counsel, restricted the relief sought to invalidation of the ceiling limits on advances, the staff structure and the pay and emoluments of Secretaries as specified in G.O. Ms. No.94. Whether this restricted relief could be granted requires to be considered.

The critical component of the impugned G.Os is the exemption granted by the State Government, from the provisions of Sec.116C of the Act and Rule 29 of the Rules, to such of those PACS which either do not have a gross profit or have only a nominal gross profit insufficient to meet the expenses of pay and allowances of at least of

one employee. In both such situations exemption from the operation of the provisions of Sec.116C of the Act has been given to such societies, for a period of three years from the date of the order (G.O. Ms. No.308 – Para4). The power of the State Government to grant such exemption is traceable to the provisions of Sec.123 of the Act, which reads as under:

"**123. Power to exempt class of societies** :- The Government may, by general or special order and for reasons to be recorded therein, exempt any society or any class of societies from any of the provisions of this Act."

On a true and fair construction of the provisions of Sec.123 of the Act it is clear that it is a grant of executive power to the Executive Branch of the State. As the power to exempt is vested without any accompanying legislative instruction or guidelines for the exercise of the power, it is perhaps open to challenge on the ground that it constitutes abdication or excessive delegation of essentially legislative power, to the Executive. However, as the power to exempt constitutes grant of executive power, in the context of the ratio of the Act considered as a whole the power is a power coupled with a duty, the duty being that the power must be used to effectuate the fundamental purposes of the legislation, as identified from the provisions of the Act. It is a duty discernable from the text, structure and philosophy of the legislation. The statutory requirement of recording of reasons imposed on the Government while exercising the power of exemption u/Sec. 123 of the Act signals the inherent and implied limitations on the power of the Government to exempt.

The cooperative moment having a recorded origin in a modest English town Rochdale in the mid-19th century, was a powerful idea of a rural development movement intended to benefit the farmer community. The idea spread to the US and to many countries and eventually came to the Indian shores too. The fundamental principles of the cooperative movement that find utterance in the seam of any legislation on this aspect are: open and voluntary membership in cooperative institutions, democratic control, payment of limited

interest on capital, distribution of surplus among the members in proportion to their contribution to the cooperative base of the institution and education of the members as to the cooperative principles. Essentially however cooperation is another mode of business activity akin in that sense to either individual entrepreneurship, partnership or a joint stock mode of business. A distinction from other modes of business however is that the business relationship in a cooperative institution is with its members who are also its shareholders. These members control and supervise the management of the affairs of a society by democratic process through representatives who are in the management. The members share the fruits of the business in proportion to the contribution of each member in the business of the cooperative institution.

There is nothing either in the origins of the cooperative movement, its evolution over a period of time or in its present structure under the provisions of the Act, which permits an inference that the cooperative institutions are intended either exclusively or substantially for the benefit of its employees. The benefits that employees of cooperative institutions derive on their employment is proportionate to the administrative and financial well being of the cooperative institution.

The role of the State and its actors in modern cooperative legislation including under the provisions of the Act, is a product of a perception that the State on account of its vast and variegated administrative experience and financial expertise is best equipped to provide guidance to cooperative institutions for their affective functioning. Such role as has been vested in the State and its agencies to supervise and regulate cooperative societies, is not intended to enable yet another avenue control pleasure to the State. If the fundamental assumptions justifying the legitimacy of the role of the State in the supervision and regulation of cooperative institutions is lost sight of misery is the consequence, as is apparent from the current crisis of the PACS.

It has not been established by the petitioner that either the State

Government, the APCOB or the DCCBs owe a legal obligation to fund or insure the establishment expenses of the PACS. However, in an attempt to sustain and revitalise the collapsing PACS structure of the Cooperative Credit Institutions in the State and as a transitory and catalyzing measure towards this end, the State Government has, by the impugned G.O.s, issued directions. It is contended by the learned Government Pleader that these directions are referable to the power available u/Sec. 131 of the Act. The power u/Sec.131 enables the State Government to issue orders and directions to the Registrar, in accordance with the provisions of the Act and in the interests of the cooperative moment in the State, as may be considered necessary. The impugned G.Os., however contain directions not to the Registrar but to the APCOB to provide loan to each PACS through the DCCBs. Though couched in an enabling phraseology the underlying thrust is however to direct the APCOB to provide loans.

As the power vested to the Government to give directions (u/Sec.131) is coupled with a legislative instruct that in exercise of such power the provisions of the Act and the interests of the cooperative movement in the State should be the underlying basis, and the ratio of the various provisions of the Act is also an inherent instruct on the power conferred u/Sec. 123 enabling the Government to exempt any society or class of societies from the provisions of the Act, the conditionalities imposed by the Government subject to which the exemptions have been granted, in the impugned G.Os, are well within the statutory provisions. Indeed it is obligatory on the Government to ensure that the advances made by the APCOB to the PACS towards establishment charges do not, in course of time, become irredeemable. It is the duty of the Government to ensure that remedial measures towards revitalisation of PACS do not result in terminal financial illness of the APCOB. As the salaries that were hitherto paid to or drawn by the employees of the PACS including the category of Paid Secretaries are all illegal and contrary to the specific provisions of Sec.116C, no legitimate grievance can urged that the

ceiling limits on pay and emoluments of the employees, imposed by G.O.Ms. NO. 94 are illegal. The ceiling on staff structure and pay and emoluments of employees of PACS specified in G.O.Ms.No. 94 coupled with the conditionalities for the advances to be made by the APCOB to the PACS and the quantum of advance that could be made relatable to the business levels of PACS, are all conditions of financial discipline for the ailing PACS which are rationally related to the object of the State Government's intervention viz., providing a transitory lifeline to the PACS for eventual revitalisation of these institutions. The conditions are rationally related to this object and cannot be charecterised as arbitrary either.

The contention of the petitioner that the conditions and ceilings on pay and emoluments specified in the impugned G.Os is contrary to the provisions of Sec.116C, is misconceived. True it is that it is the PACS that is invested with the power of fixing its staffing pattern and the qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar. This is so when the salary and emoluments of the employees of PACS is met out of its own funds. That is not the situation now. All the PACS in the State or a overwhelming majority of them, are in the position where either no salary, pay and emoluments could be paid to any employee or only a pittance could be paid, within the limits of financial discipline mandated by Sec.116C. In these circumstances the State has intervened and directed the APCOB to advance amounts to each PACS, as loan, for meeting its establishment expenditure. As the State, in this situation, is issuing directions with respect to the monies of APCOB, the State is obligated to carefully structure and incorporate conditions to the directives, which do not render the advances made by the APCOB into a decidedly and preordained misadventure. This court discerns no infirmity in the conditions incorporated in the impugned G.Os, on the aforesaid analysis. The G.O.s have no application to those PACS which are in a position to meet their establishment expenditure in conformity with the discipline of Sec.116C of the Act.

The contention that the State is bound to accept the recommendations of the Registrar contained in his letter dt 23.2.2004 and that the orders of the Government in G.O. Ms. Nos. 308 and 94 are invalid for acceptance of the proposals of the APCOB overlooking the recommendations of the Registrar, does not commend acceptance by this court. G.O.Ms. No. 308 dt 19.11.2003 is anterior in point of time to the proposals of the Registrar dt 23.2.2004. The date of the proposals of the APCOB has not been furnished to this court. There is, however a reference in G.O.Ms. NO.308 to two other communications, one from the Managing Director, APCOB, dt 9.10.2003 and another from the Registrar dt 7.10.2003. The contents of these communications from those authorities to the State Government has not been placed before this court. On an analysis of the contents of G.O.Ms. No.308, it is possible to infer that the financial plight of the PACS, the fiscal discipline mandated by Sec.116C of the Act, the grossly anarchic conduct of the employees of PACS of recovering loan money and appropriating the same towards their salaries instead of remitting it to the DCCBs as well as the representations of the employees for emoluments, have all been factors which had triggered the impugned State action. The State considered the recommendations of the Cabinet Sub Committee dt 6.10.2003 and suggestions received from the APCOB and the Registrar. The decision under G.O.Ms. No.308 is the culmination of the various inputs received by the Government. Neither the provisions of Sec.123 nor those of Sec.131 of the Act require the Government to abide by the recommendations of the Registrar. The Registrar has also no recommendatory role consecrated under the provisions of the Act. The Registrar is administratively subordinate to the State even in the statutory sense in view of Sec.131. It is inconceivable either on empirical principle or in the statutory context that the Government should be bound by the recommendations of the Registrar. As an authority having supervisory and regulatory functions over the affairs of the society, under the provisions of the Act, the knowledge and perceptions of the Registrar as to the problems infesting the PACS, require the Government to consider the

analysis of the problem and the solutions suggested by the Registrar while taking a decision to exercise powers u/Secs.123 and 131. The APCOB being the principal credit society at the State level is also a relevant player in the cooperative credit structure in the State. The monies drawn by the PACS through the DCCBs are from the APCOB. The APCOB is therefore vitally interested in the regularity of the functioning of the PACS and the financial integrity of its operations. The APCOB is itself accountable to a federal funding agency from whom monies are drawn by it for funding the lower echelons of the Cooperative Credit structure in the State. Being an institution at the apex level in the State engaged in the business of cooperative credit finance, the APCOB must be presumed to have the necessary technical expertise to identify the problems of the PACS and also to suggest solutions for it. In critical areas the expertise of the APCOB on this aspect may be superior to the general perceptions of the Registrar. In any view of the matter, as neither the Registrar nor the APCOB are statutory consultants of the State in exercise of its powers u/Secs. 123 or 131, the State Government cannot be said to be bound by the advice of either. It is at liberty to consider the proposals or advice of any institution or authority while taking an independent decision. The contention of the petitioner that the Registrar is a statutory consultant of the State Government and the APCOB an alien and an interloper, is a contention that is fundamentally misconceived and based on a gross misconception. This contention deserves to be rejected and accordingly is.

The other contention urged is that the reduction or denial of salaries to employees of PACS on account of fall in business or in gross profits of PACS is arbitrary and illegal. On facts and law this contention is misconceived. The petitioner has not challenged the validity of Sec.116C of the Act in this writ petition. The validity of this provision has also been upheld by this court [2002(1) ALD 271]. The pay and allowances hitherto drawn by the employees of the PACS were illegal, unauthorised and in clear contravention of Sec.116C.

None of the PACS have an approved staffing pattern nor have the pay scales and other allowances of its employees been approved as required u/Sec.116C. While the distress currently faced by the employees of the PACS may warrant sympathy, sympathy cannot be the exclusive foundation for the issuance of a Mandamus. It is axiomatic that legal entitlement is the legitimate basis for exercise of curial jurisdiction. No instrument of a legal character has been brought to the notice of this court which entitles the employees of PACS to draw pay and emoluments *de hors* the procedural and substantive fiscal discipline enjoined by Sec. 116C of the Act. No principle has also been urged enabling identification of any legal obligation either in the State, the APCOB or the DCCBs to bear the establishment expenses of PACS. It is also not pleaded, urged or demonstrated before this court that the PACS are “State” within the meaning of Art.12 of the Constitution. They perform no sovereign functions. On any of the settled principles and indicia for characterising an institution as an agency or instrument of the State, the PACS do not fall to be characterised as State or other authority within the meaning of Art.12 of the Constitution. If the PACS are not State, no writ could be issued directing them to perform a duty. This is apart from the fact that what is the legal duty owed by the PACS in this area has not been spelt out by the petitioner except urging a factual, though critical, grievance of non payment of salaries. This court is not persuaded to the view that Mandamus is the remedy for every variety of administrative myopia or is a curative to every policy misadventure.

Another contention urged on behalf of the petitioner is that while the APCOB and DCCB s had been exempted from the requirement of compliance with the provisions of Sec.116C of the Act and the employees of these institutions are permitted to draw pay scales and emoluments without reference to the financial limits u/Sec.116C, the employees of the PACS alone have been singled out for discriminatory treatment by the State; by granting only conditional relaxation of the provisions of Sec.116C of the Act in G.O. Ms. No.94.

In this connection in the additional affidavit dated 31.3.2004 filed in this writ petition, the petitioner pleads that the Managing Director of the APCOB had directed the General Managers of the DCCBs to seek exemption from the operation of the provisions of Sec.116C and that such exemption was granted and all employees of the APCOB and DCCBs were exempted from the provisions of Sec.116C and are drawing salaries and all remunerations including arrears as was done earlier while in respect of PACS alone the viability of the society is being made an issue (Para-4). In this connection the petitioner also relies on a letter dated 8.7.2002 addressed by the Chief General Manager, APCOB, to the General Managers of the DCCBs. In this letter the Chief General Manager, APCOB, while pointing out the provisions of Sec.116C(i) of the Act and the requirement of limiting the expenditure towards pay and allowances of employees within the limits prescribed therein and that the DCCBs have violated the provisions, directed the DCCBs to take action for complying with the provisions of the Act. The APCOB directed that the steps specified in the letter should be taken and time bound action plan prepared. The letter also stated in (Para-4) that in case the DCCBs are not complying with the provisions of Sec.116C of the Act, they are advised to seek *inter alia*, exemption from the provisions of the Act, up to 30.6.2003. Another letter of the Managing Director of the APCOB, dated 30.3.2003, also in effect directs the DCCBs to follow the guidelines for each category of banks specified in the letter and to factor in the measures suggested in the action plans which are submitted or are to be submitted while seeking exemption from the provisions of Sec.116C of the Act.

This additional affidavit has been filed by the petitioner without the leave of this court therefor and the respondents had no opportunity of filing a counter affidavit thereto. Apart from the suggestion of the APCOB management to the DCCBs to seek exemption from the provisions of Sec.116C of the Act (wherever a particular DCCB has violated the provisions of Sec.116C), no material is placed before this

court to establish that DCCBs had either applied to the State Government for exemption from the provisions of Sec.116C or that any such exemption was in fact granted to the DCCBs. This court is therefore not sensitised to the relevant factual circumstances on this aspect. If exemption had been sought and granted to the DCCBs, the orders of exemption need to be scrutinised to ascertain the circumstances in which and the conditions subject to which, such exemptions were granted and whether there are features which justify a distinction between DCCBs and the PACS. If however employees of all the DCCBs are being paid salaries and emoluments contrary to the provisions of Sec.116C without exemptions having been granted in this behalf or in violation of the conditions of exemption if exemptions have been granted and subject to conditions, it would be yet another illustration of the financial anarchy prevailing in DCCBs also as has become the reigning feature in the PACS. If such be the case, the State and the Registrar would be duty bound as regulatory agencies to take immediate and strict action in accordance with the obligations cast on the State and the Registrar under the provisions of the Act. The failure of the State or Registrar in this area would constitute a conscious violation of the mandatory provisions of the Act and abdication of statutory responsibilities.

The regulatory failure of the State or the Registrar in relation to DCCBs would however not entitle the petitioner to claim that a Mandamus be issued to the State or the Registrar, as the case may be, to abdicate statutory responsibilities in the case of PACS also as in the case of DCCBs. No more can be said regarding this contention of the petitioner in the absence of the necessary factual data and in the light of the above analysis.

Sri S. Ramachandra Rao, learned Senior Counsel, urged that the salary limits imposed on the category of Paid Secretaries in G.O.Ms. No.94 is violative of the provisions of the Minimum Wages Act 1948. On this aspect it is contended that in G.O.Ms. No.82 Labour, Employment, Training & Factories Department, dated 2.12.2000, the State Government issued a notification u/Sec.5 of the Minimum

Wages Act, 1948 fixing the minimum rates of wages payable to the specified categories of employees , employed in various categories of cooperative institutions. In the schedule to the G.O., Category III sets out employees *inter alia*, of PACS. The minimum wage fixed for the category of Secretaries is Rs.3,461/-, while the minimum wage to the categories of Clerks and Attenders is Rs.2,182 and Rs.2,006 respectively. The contention urged is that fixation of salary limits in G.O. Ms. No.94 lower than the minimum wages notified in G.O. Ms. No.82 is illegal and unsustainable. It is also urged that every PACS with a limited liability and working capital of not less than Rs. One lakh is mandated to appoint a Paid Secretary – vide Rule 29 of the Rules. As nearly all PACS must therefore employ Paid Secretaries and the minimum wages notification specifies the minimum wage payable to Secretaries, the petitioner implies that every PACS which is functioning should have a Paid Secretary whose salary cannot be below that specified in G.O. Ms. No.82. Having advanced this contention, during the course of hearing Sri Ramachandra Rao, learned Senior Counsel, however stated that this aspect is being urged by the petitioner as part of a larger challenge in another writ petition pending before this court in which the validity of Sec.116C of the Act has also been challenged in the context of the fact that the A.P. Acts 21 of 1985 and 22 of 2001 have not received the assent of the President and the provisions introduced into the Act by these amendments including Sec.116C of the Act are therefore canvassed as being inconsistent with the provisions of the Minimum Wages Act 1948 and the notifications made thereunder. In view of the above submission it is not necessary to consider or adjudicate upon this contention in this writ petition. The petitioner has also not elaborated on this contention except stating it in passing.

Having considered the chronology of events leading to the present critical situation of the PACS and its employees, this court considers it appropriate to record its deep concern at the manner in which even the specific and explicit provisions of the Act have been violated; the regulatory and supervisory provisions have been neglected

constituting abdication of statutory responsibilities and at the unauthorised intrusion by the State into the affairs of the PACS resulting in choking the autonomy of the PACS even in areas where autonomy has been specifically vouchsafed to them under the provisions of the Act. The situation has now assumed a complex and critical dimension. It is hoped that serious consideration will be accorded by the State and the Registrar to the mal-administration in the Cooperative Department as well as the three tiers of the cooperative credit institutions in the State and that in the process of identification of the solutions the provisions of the Act would not be again or further eschewed.

On the analysis of the facts and circumstances of the case however it is not possible to conclude that G.O.Ms. No. 308 Agriculture & Cooperation (Coop. VI) Department, dated 19.11.2003 and G.O.Ms. NO. 94 Agriculture & Cooperation (Coop. VI) Department, dated 28.2.2004, suffer from any infirmity warranting their invalidation. No Mandamus can either be issued directing that the employees of the PACS should be paid the same pay and allowances that they were hitherto drawing under the cover of the *ab intitio* void and illegal Government Memo dated 14.10.1991. There are no merits in the writ petition. The writ petition is accordingly dismissed but in the circumstances of the case without costs.

Date: 06.08.2004 ----------

LR Copy to be marked: **Yes** Justice G.Raghuram

(B/o)

Pvsn

To

1. The Government of Andhra Pradesh

Cooperative Department, rep. by its

Secretary, Hyderabad.

2. The Commissioner & Registrar of

Cooperative Societies, Hyderabad.

3. Two copies to the Government of Pleader for Cooperation,

High Court Buildings (OUT)

4. 2CD copies

5. 8 LR Copies

6. The Under Secretary, Union of India, Ministry of Law, Justice &

Company Affairs, New Delhi,

7. The Secretary, A.P. Advocates Association Library,

High Court Buildings, Hyderabad.